

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 144 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

MAJITBHAI ISMAIL NAGUJI

Versus

ABDUL SATTAR ISA CHAMADIA

Appearance:

MR RN SHAH for Petitioner

MR RM VIN for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/04/98

ORAL JUDGEMENT

This is plaintiff's Second Appeal.

The brief facts are that the plaintiff-appellant filed initially the suit for permanent injunction alleging that he was in possession of the open land in dispute and about 8 months before the

defendants-respondents illegally and forcibly committed trespass over the said land and started digging foundation on the eastern side of the suit land. In spite of the plaintiff's request the defendants did not desist from the construction activity. Hence the suit was filed.

In the suit, subsequently, relief of possession was also sought.

The suit was contested on the ground that the land in dispute is owned by Sanjeli Panchayat over which the plaintiff-appellant has no title. The defendants denied to have raised any construction over the disputed land behind the plaintiff's house. On the other hand they alleged that the construction was raised over their land which was in their possession. Since the construction was raised to some extent it was pleaded that the plaintiff is not entitled to injunction.

The Trial Court decreed the suit declaring that the plaintiff is entitled to possession over the disputed property and with this declaration relief of possession was also granted.

The appeal was preferred in the lower Appellate Court which was allowed and decree of the Trial Court was set aside. It is how this Second Appeal has come before this Court.

Following substantial question of law was formulated in this Second Appeal :

"Whether a person in possession of property cannot file a suit for removing encroachment on the land though in the ownership of the panchayat ?"

Learned Counsel for the parties have been heard at length. Judgments of the two Courts below had been considered. There is concurrent finding recorded by the Courts below that the land in dispute is neither owned by the plaintiff-appellant nor by the defendants-respondents. On the other hand, it was clearly held that the land in dispute belongs to Sanjeli panchayat. An application was given in the Trial Court for impleading Sajeli Panchayat as necessary party to the suit but this application was rejected.

In view of the above finding that the appellant-plaintiff is not the owner of the land in

dispute and further in view of the fact that the construction has been raised by the defendants-respondents it was correct for the lower Appellate Court to set aside the judgment and decree of the Trial Court. The plaintiff no doubt alleged to be the owner in possession of the property but he has failed to establish his title over the property hence he could not get decree for possession nor the decree for removal of alleged encroachment. Consequently no error of law was committed by the lower Appellate Court in allowing the appeal and dismissing the suit.

As consequence thereof it is held that a person in possession of property cannot file suit for removing encroachment over the land which belongs to Sanjeli panchayat. There is thus no merit in this appeal which is hereby dismissed. In the facts and circumstances of the case the parties shall bear their own costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt